

<sup>2</sup> The Board notes that following the issuance of OWCP’s August 24, 2021 decision, appellant submitted additional evidence on appeal. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On September 16, 2020 appellant, then a 52-year-old miscellaneous clerk, filed an occupational disease claim (Form CA-2) alleging that she developed high blood pressure due to factors of her federal employment. She alleged that employing establishment managers harassed her, forced her to work outside of medical restrictions, cut her hours, and ultimately fired her in retaliation. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on September 3, 2019. The employing establishment noted that it was investigating appellant's claim. Appellant stopped work on September 5, 2020.

On September 16, 2020 OWCP also received a narrative statement wherein appellant detailed her allegations regarding harassment and a hostile work environment.

In a development letter dated December 10, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. By separate development letter of the same date, OWCP requested that the employing establishment address appellant's allegations.

In a January 20, 2021 letter, the employing establishment controverted appellant's claim. It contended that she had not submitted any evidence in support of her allegations and noted that she was terminated for cause.

By decision dated March 24, 2021, addressed to appellant's last known address, OWCP denied her claim as she had not established an emotional condition in the performance of duty. It found that the evidence of record was insufficient to establish that the alleged incidents occurred, and that there were no accepted events that were compensable factors of employment.

OWCP continued to receive statements from appellant and medical evidence.

In an April 30, 2021 memorandum of telephone call (Form CA-110), OWCP noted that appellant had called and inquired regarding the status of her case, as she had not received a decision by mail. It noted that she had not changed her address and mailed a copy of the decision to her.

In a June 8, 2021 Form CA-110, OWCP noted that appellant requested another copy of the decision. It verified that the address on the March 24, 2021 decision was correct and mailed another copy of the decision to her.

By appeal request form dated July 8, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She provided additional evidence in support of her claim.

By decision dated August 24, 2021, OWCP denied appellant's request for an oral hearing, finding that the request was not made within 30 days of the March 24, 2021 decision and, therefore, was untimely filed. It informed her that her case had been considered in relation to the issue involved and that the issue could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."<sup>3</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>4</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>5</sup> Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

OWCP's regulations provide that a request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.<sup>7</sup> Appellant therefore had 30 days following OWCP's March 24, 2021 merit decision to request an oral hearing before a representative of OWCP's Branch of Hearings and Review. Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. However, since the envelope was not contained in the case record, OWCP properly utilized the date of the request. As appellant's request for an oral hearing

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<sup>3</sup> *Supra* note 1 at § 8124(b)(1).

<sup>4</sup> 20 C.F.R. §§ 10.617, 10.618.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *See A.M.*, Docket No. 21-0256 (issued July 22, 2021); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>7</sup> *Supra* note 5.

was dated July 8, 2021, more than 30 days after OWCP's March 24, 2021 decision, it was untimely filed and she was, therefore, not entitled to an oral hearing as a matter of right.<sup>8</sup>

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its August 24, 2021 decision, properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>9</sup> In this case, OWCP did not abuse its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing, as untimely filed, pursuant to 5 U.S.C. § 8124(b)(1).

On appeal appellant argues that she did not receive a copy of the March 24, 2021 decision until after June 8, 2021. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.<sup>10</sup> The evidence of record establishes that the March 24, 2021 decision was properly mailed to appellant at her last known address of record.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (September 2020); *see W.N.*, Docket No. 20-1315 (issued July 6, 2021); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018).

<sup>9</sup> *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>10</sup> *See J.W.*, Docket No. 21-0869 (issued January 14, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board